

Message Text

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C O N F I D E N T I A L SECTION 01 OF 03 LONDON 17616

E.O. 11652: GDS

TAGS: ENRG UK

SUBJECT: NORTH SEA OIL: A RETROSPECTIVE VIEW OF THE
DEBATE ON THE PETROLEUM AND SUBMARINE PIPELINES
BILL

1. SUMMARY: THIS MESSAGE SUMMARIZES THE HIGHLIGHTS OF THE MANY HOUSE OF LORDS DEBATES ON THE PETROLEUM BILL BETWEEN JULY AND NOVEMBER AND THE REJECTION BY THE GOVERNMENT AND HOUSE OF COMMONS ON NOVEMBER 5 OF MOST AMENDMENTS INTRODUCED IN THE LORDS. STATEMENTS BY SECSTATE FOR ENERGY BELN AND OTHER GOVERNMENT SPOKESMEN ON THE FUTURE OF THE NEWLY ESTABLISHED BRITISH NATIONAL OIL CORPORATION AND HMG INTENTIONS WITH RESPECT TO MAJORITY STATE PARTICIPATION ARE OF PARTICULAR INTEREST. END SUMMARY.

2. THE LONG DELAYED, MUCH DEBATED PETROLEUM AND SUBMARINE PIPELINES BILL FINALLY WAS ENACTED ON NOVEMBER 12. AS EXPECTED, MOST AMENDMENTS PASSED BY THE HOUSE OF LORDS AFTER PROLONGED STRUGGLE BETWEEN HMG AND OPPOSITION SPOKESMEN WERE DISAPPROVED BY THE COMMONS ON NOVEMBER 5. NONETHELESS, AT LEAST ONE MAJOR IMPROVEMENT HAS BEEN MADE IN THE FINAL VERSION OF THE BILL IN THAT IT NOW PROVIDES FOR PARTIAL RATHER THAN TOTAL REVOCATION OF A LICENSE

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IN THE EVENT OF AN OIL COMPANY REJECTION OF A GOVERNMENT

ORDER ATTEMPTING TO FORCE DEVELOPMENT OF A PARTICULAR AREA. AS PREVIOUSLY REPORTED AT LENGTH, THE EXTENSIVE CONSULTATIONS BETWEEN HMG AND THE OIL INDUSTRY HAVE GONE A LONG WAY TOWARD MAKING THE BILL ACCEPTABLE AS FRAMEWORK LEGISLATION. BUT THE STRONG FEELING REMAINS THAT THE MANNER OF ITS IMPLEMENTATION BY THE SECSTATE FOR ENERGY AND DEPARTMENT OF ENERGY OFFICIALS WILL DETERMINE THE EXTENT TO WHICH INDUSTRY-GOVERNMENT RELATIONS AND THE PACE OF FUTURE NORTH SEA OIL DEVELOPMENT WILL BE AFFECTED.

3. THE DEBATES IN THE LORDS WERE HIGHLY ILLUMINATING ON A NUMBER OF ISSUES, DESPITE THE FACT THAT ALMOST ALL AMENDMENTS MADE THERE WERE REJECTED BY THE COMMONS. A NUMBER OF STATEMENTS SHED LIGHT NOT ONLY ON THE SPECIFIC AMENDMENTS DISCUSSED, PARTICULARLY ONE TO ESTABLISH THE RIGHT TO COMPENSATION FOR ABROGATION OF CONTRACTUAL RIGHTS, BUT ALSO ON THE GOVERNMENT'S ATTITUDE TOWARD MAJORITY STATE PARTICIPATION AND THE BRITISH NATIONAL OIL CORPORATIMN (BNOC) CREATED BY THE BILL.

4. THE CONSERVATIVE OPPOSITION ATTEMPTED VOCIFEROUSLY BUT WITHOUT SUCCESS TO TRIM THE SAILS OF THE NEWLY ESTABLISHED BNOC. HMG SPOKESMEN MADE CLEAR THAT THE GOVERNMENT INSISTED UPON THE OPTION OF THE STATE OIL COMPANY OPERATING BOTH (A) AS A PRIVILEGED ARM OF THE SECRETARY OF STATE FOR ENERGY IN AID OF THE EXERCISE OF HIS POWERS AS A REGULATOR OF THE OIL INDUSTRY AND AS A PARTNER ON A PURELY COMMERAIAL BASIS IN THE DEVELOPMENT OF OFFSHORE OIL AND (B) AT SOME UNSPECIFIED DATE AS AN OPERATOR ON ITS OWN ACCOUNT IN MARKETING AND DISTRIBUTION ACTIVITIES. THE OPPOSITION SIMILARLY FAILED TO WIN ACCEPTANCE OF ITS ARGUMENTS THAT HMG'S UNILATERAL ABROGATION OF LICENSE TERMS WITHOUT PROVISION FOR ADEQUATE COMPENSATION IN CONNECTION WITH THE PROPOSED TAKING OF POWERS TO INSTITUTE DEPLETION LIMITATIONS IN FACT CONSTITUTED A BREACH OF LAW, UNDERMINED OIL INDUSTRY CONFIDENCE AND SET A PRECEDENT FOREIGN GOVERNMENTS MIGHT FOLLOW IN DEALING WITH BRITISH-OWNED INVESTMENTS.

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5. THE OIL INDUSTRY ALSO CRITICIZED THE RETROSPECTIVE NATURE OF THE LEGISLATION AND THE LACK OF ADEQUATE ARBITRATION AND COMPENSATION PROVISIONS. BUT THE INDUSTRY SOUGHT AS WELL THE INSTITUTION OF SPECIFIC LIMITATIONS ON THE WAY IN WHICH DEPLETION CONTROLS COULD BE EXERCISED ONCE A DEVELOPMENT PROGRAM WAS APPROVED, RESTRICTIONS ON THE SECRETARY OF STATE'S POWERS OF LICENSE REVOCATION IN THE EVENT OF DISPUTES OVER PROPOSED EXPLORATION OR

DEVELOPMENT ACTIVITIES, EQUITABLE SHARING OF COSTS BY
THIRD PARTY PARTICIPANTS IN EXISTING PIPELINES AND A
HOST OF LESSER TECHNICAL AMENDMENTS OF INTEREST TO
INDUSTRY.

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6. THE INDUSTRY WAS COMPARATIVELY MORE SUCCESSFUL IN
ACHIEVING ITS LIMITED AIMS. THE GOVERNMENT'S MAIN CLUB
WITH WHICH TO FORCE INDUSTRY COMPLIANCE WITH ITS WISHES
WILL BE HMG'S POWER TO APPROVE OR DISAPPROVE A GIVEN
FIELD DEVELOPMENT PROGRAM. WITH RESPECT TO FIELDS CUR-
RENTLY UNDER DEVELOPMENT, THIS IS APT TO BE A RUBBER
STAMP PROPOSITION. OIL COMPANY LICENSEES UNDOUBTEDLY WILL
DUST OFF THEIR EXISTING DEVELOPMENT PLANS, WHICH DEPART-
MENT OF ENERGY OFFICIALS HAVE SEEN LONG SINCE AS A MATTER
OF INFORMATION, AND WILL APPLY FOR FORMAL APPROVAL. IT
IS DOUBTFUL THE GOVERNMENT WILL DISAPPROVE OR ATTEMPT TO
TAMPER IN ANY SIGNIFICANT FASHION WITH SUCH PLANS UNLESS
IT IS PREPARED TO SEE CURRENT NORTH SEA DEVELOPMENT AC-
TIVITY GRIND TO A HALT--A MOST UNLIKELY PROSPECT.

7. IT IS A DIFFERENT STORY, HOWEVER, WHEN IT COMES TO

COMMERCIAL DISCOVERIES WHICH HAVE NOT YET REACHED THE DEVELOPMENT STAGE. THE GOVERNMENT MAY VERY WELL CONSIDER USING ITS POWERS TO EXTRACT AGREEMENT TO THE PRINCIPLE OF MAJORITY STATE PARTICIPATION. IT IS TOO EARLY TO TELL HOW BOLDLY THE GOVERNMENT WILL PROCEED IN THIS AREA AND WHAT THE REACTION OF COMPANIES WILL BE.
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8. OF PARTICULAR INTEREST DURING THE LORDS DEBATE WERE THE INTERVENTIONS OF LORD HAILSHAM, AN EMINENT LEGAL AUTHORITY AS WELL AS POLITICAL FIGURE, WHO CHALLENGED THE GOVERNMENT ON ITS FAILURE TO COMPENSATE THE COMPANIES ON THE BASIS OF WELL RECOGNIZED CONCEPTS OF INTERNATIONAL LAW. (PERTINENT EXTRACTS FROM HANSARDS WILL BE FORWARDED TO EUR/NE AND L.) ON PIPELINE PROVISIONS RESPECTING THIRD PARTIES, HMG HAD ORIGINALLY MADE QUITE CLEAR THAT IT INTENDED SOME LARGER FIELDS IN EFFECT TO SUBSIDIZE A NEARBY MARGINAL FIELD. AS IT NOW STANDS THE AMENDED BILL REQUIRES A THIRD PARTY TO PAY AN EQUITABLE SHARE OF OPERATING COSTS, BUT THERE ARE ONLY GOVERNMENT ASSURANCES, NOT A PROVISION OF LAW, THAT PAYMENT OF PIPELINE SHUTDOWN COSTS DURING THE PERIOD WHEN TIE-IN OF A NEW FIELD TAKES PLACE WILL ADHERE TO THE NEW ENTRANT RATHER THAN THE ORIGINAL PIPELINE OWNERS. THE SO-CALLED "BLACKMAIL" AMENDMENT PROVIDING THAT NO POWERS GRANTED TO THE SECSTATE FOR ENERGY BY THE BILL COULD BE USED TO FORCE AGREEMENT TO MAJORITY STATE PARTICIPATION WAS REJECTED BY SECSTATE BENN WHO SAID "THE AMENDMENT SAYS THAT IN THE NEGOTIATION, WHICH IS VOLUNTARY (SIC), WE SHALL NOT BE IN A POSITION TO USE THE CARDS THAT PARLIAMENT IS PUTTING IN OUR HANDS BY GIVING US THIS LEGISLATION, IF PARLIAMENT CHOOSES SO TO DO." (PERTINENT EXTRACTS WILL BE POUCHED.)

9. IN DISCUSSION OF BNOC, BENN MADE CLEAR THAT THE GOVERNMENT INTENDS THE TREASURY AS WELL AS THE DEPARTMENT OF ENERGY TO HAVE A CIVIL SERVANT ON ITS BOARD OF DIRECTORS IN VIEW OF THE ENORMOUS SUMS OF PUBLIC MONEY INVOLVED. SIMILARLY, WITH RESPECT TO THE OPERATION OF THE NATIONAL OIL ACCOUNT, BNOC CAN ENTER DOWNSTREAM OPERATION ONLY WITH THE APPROVAL OF THE TREASURY AS WELL AS THE ENERGY DEPARTMENT. THE GOVERNMENT REJECTED OUT OF HAND AN AMENDMENT WHICH SOUGHT TO PROTECT THE COMPANIES AGAINST UNFAIR COMPETITION BY BNOC, THE GIST OF THE ARGUMENT BEING THAT THE CLAUSE WOULD MAKE BNOC MORE VULNERABLE TO VEXATIOUS LITIGATION AND CONSTITUTE AN UNNECESSARY RESTRICTION ON ITS OPERATIONS. NOT ONLY WOULD IT BE DIFFICULT IN PRACTICE TO PROVIDE THE SORT OF PROTECTION THE LORDS HAD IN MIND, ACCORDING TO HMG, BUT IT WAS FOUND SURPRISING
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"THE MIGHTY OIL COMPANIES" NEEDED PROTECTION FROM THE INFANT BNOC. HMG DID AGREE TO A LORDS AMENDMENT REQUIRING BNOC TO PUBLISH IN ITS ANNUAL REPORT AN ESTIMATE OF THE AMOUNT OF PETROLEUM REVENUE TAX (PRT) AND CORPORATION TAX THAT IT WOULD HAVE PAID IF IT WERE LIABLE TO PAY PRT. A FURTHER AMENDMENT WHICH WOULD HAVE REQUIRED BNOC TO PUBLISH IN ITS ACCOUNTS DETAILS OF BENEFITS, DISCOUNTS AND CONCESSIONS IT RECEIVED WHICH ARE NOT AVAILABLE TO A COMPETITOR IN THE PRIVATE SECTOR WAS REJECTED BY BENN, WHO SAID THIS WOULD INVITE BNOC TO OPERATE UNDER A BUBBLE OF TRANSPARENCY UNDER WHICH NO (OTHER) OIL COMPANY IN THE WORLD WAS ASKED TO OPERATE.

10. IN DISAGREEING WITH THE LORDS AMENDMENT REQUIRING PAYMENT OF COMPENSATION ARISING FROM CHANGES IN PROVISIONS UNDER WHICH EXISTING LICENSEES OPERATED, BENN DECLARED "WE HAVE FOUND IT NECESSARY TO CHANGE THE EXISTING LICENSES BECAUSE THE TERMS NEGOTIATED BY THE GOVERNMENT WERE FOOLISHLY AND IRRESPONSIBLY GIVEN AND DID GREAT DAMAGE TO OUR NATIONAL INTERESTS. THEY GAVE AWAY THINGS

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THAT SHOULD NOT HAVE BEEN GIVEN AWAY." HE WENT ON TO SAY THE GOVERNMENT WERE CHANGING THE REGIME THROUGH LEGISLATION AND DOING IT AS ANYONE DEALING WITH THE BRITISH GOVERNMENT WOULD EXPECT, ON THE BASIS OF GOOD FAITH AND GOOD WORKING RELATIONS WITH THE OIL COMPANIES. THE LEGISLATION WAS NOT RETROSPECTIVE AND THERE WAS NOTHING WHATEVER IN ITS FORM THAT WOULD MERIT COMPENSATION. (PERTINENT EXTRACTS WILL BE POUCHED.)

11. ON PARTICIPATION, BENN MADE CRYSTAL CLEAR THAT HMG WAS DETERMINED THAT THEIR POLICY WOULD BE SUCCESSFUL IN THEIR VOLUNTARY NEGOTIATIONS AND THAT NOBODY SHOULD BE MISLED BY PRESS REPORTS, RUMORS OR SPECULATION TO SUPPOSE THAT THE GOVERNMENT'S INTENTION WAS NOT SERIOUS. PARTICIPATION SHOULD BE PRESSED FORWARD NOT ONLY WITH COMPANIES WITH WHOM HMG HAD REACHED AGREEMENT IN PRINCIPLE BUT SHOULD ALSO BE PRESSED FORWARD TO COVER THE MAJOR COMPANIES. ALLUDING TO OPPOSITION CRITICISM OF THE TIME IT HAD TAKEN TO BUILD UP BNOC, BENN DECLARED THAT "NOBODY SHOULD MISTAKE THAT FOR WEAKNESS OF INTENTION OR SECOND THOUGHTS ABOUT BNOC. WE INTEND TO HAVE A BNOC AND WE INTEND IT TO DEVELOP ON A 51 PERCENT PARTICIPATION BASIS....I WOULD NOT TAKE PART IN ANY FORM OF CHARADE OR CONFIDENTIAL

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APPEARANCE OF NOT BEING SERIOUS. WE ARE IN DEADLY EARN-EST ABOUT IT." BENN REGRETTE THAT CONSERVATIVE OPPOSITION LEADER MARGARET THATCHER SHOULD HAVE CHOSEN TO GO ABROAD AND MAKE STATEMENTS SHE MAY HAVE HOPED WOULD WIN HER SOME POPULARITY. HE SAID SHE "MADE SPEECHES IN THE UNITED STATES WHICH WERE DESIGNED TO UNDERMINE THE CREDIBILITY OF THIS POLICY....NO ONE SHOULD ASSUME THAT ATTEMPTS TO CURRY POPULARITY IN THE UNITED STATES BY MEANS OF SUCH SPEECHES, OR BY GIVING ILL-CONSIDERED PLEDGES WHICH MIGHT BE GREATLY REGRETTE, WILL CAUSE MISUNDERSTANDING OR CONFUSION ABOUT THE REALITY OF THE GOVERNMENT'S DETERMINATION" TO NEGOTIATE VOLUNTARILY WITH THE POWERS AT THEIR DISPOSAL TO SECURE THEIR OBJECTIVE MADE CLEAR IN TWO ELECTIONS--THAT WE WOULD SEEK 51 PERCENT PARTICIPATION IN OFFSHORE OIL.

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